

NO PAYMENT RECEIVED
Refund sent to District

Date 9/25/97

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JUL 28 1997

EIN: [REDACTED]
Key District: [REDACTED]

Dear Taxpayer:

We have considered your application for recognition of exemption under section 501(c)(7) of the Internal Revenue Code.

You were formed in the state of [REDACTED] as an association through a constitution and bylaws. Your stated purpose is "for the advancement of private clubs and the people to be served by our hands." In the event that you are dissolved, your assets will be sold off and the proceeds will be used to pay [REDACTED] as well as to [REDACTED].

You have stated in your application that you are a "privately owned sole ownership club that serves the public." You have stated that a "privately-owned-sole ownership club" means that [REDACTED] financed all the capital and material to bring you into existence.

You have stated in your exemption application that your activities consist of providing hunting, fishing and tour excursions. There is no further discussion about any type of hunting, fishing and tour excursions.

It appears that you operated a private bar from [REDACTED]. You were shut down by the alcohol and beverage control board for operating illegally. [REDACTED] and [REDACTED] were fined and placed on one year of probation. After one year, all charges will be dropped provided that no other violations occur.

Currently you are conducting no activities. You will not operate the bar until you receive tax exemption under section 501(c)(7) of the Code.

You have a four person board of directors that includes [REDACTED] has total control of all club business. [REDACTED] and [REDACTED] are your employees. Each officer is paid a salary.

[REDACTED]

You have stated that you have [REDACTED] members that pay dues of \$ [REDACTED] per year. You offered complementary memberships as a way to increase your membership base. Complementary memberships give members the right to attend meeting and events, but no voting rights at meetings. You permitted members to bring guests to the bars and charged male guests \$ [REDACTED] per night to enter the club premises for events.

Your [REDACTED] financial statement indicates that your gross receipts were \$ [REDACTED] which included \$ [REDACTED] in guest fees from the bar operation.

Section 501(c)(7) of the Code classifies as exempt from taxation, clubs organized for pleasure, recreation and other nonprofitable purposes, substantially all of the activities of which are for such purposes and no part of the net earnings of which inures to the benefit of any private shareholder.

Section 1.501(c)(7)-1(b) of the Income Tax Regulations provides that a club which engages in business, such as making its social and recreational facilities available to the general public is not organized and operated exclusively for pleasure, recreation and other nonprofitable purposes, and is not exempt under section 501(a). Solicitation by advertisement or otherwise for public patronage of its facilities is prima facie evidence that the club is engaging in business and is not being operated exclusively for pleasure, recreation or social purposes.

Rev. Rul. 58-588, 1958-2 C.B. 265 provides that an organization formed by several individuals to operate a health, recreational, and social club but whose activity is the selling of services for profit to an unlimited number of so-called members, who have no voice in the management of the club and whose only rights are to the use of the club's facilities upon the payment of specific fees, is not a tax-exempt social club within the meaning of section 501(c)(7) of the Code.

Rev. Rul. 69-635, 1969-2 C.B. 126 provides that the lack of commingling of members is an indication that the basic purpose of the organization is only to provide personal services and goods to the membership in a manner similar to commercial counterparts.

Rev. Proc. 71-17, 1971-1 C.B. 683, describes circumstances under which nonmembers who use a club's facilities will be assumed to be guests of members. These circumstances provide that income from bona fide guests will be treated as member income if the payment is made directly by the member.

Public Law 94-568, October 20, 1976, amended the Code with respect to the requirements for tax exemption under section

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501(c)(7). Senate Report No. 94-1318, Second Session 1976-2 C.B. 597, provides that the decision in each case as to whether substantially all of the organization's activities are related to its exempt purposes is to continue to be based upon all of the facts and circumstances. It is intended that these organizations be permitted to receive up to 35% of gross receipts, including investment income from sources outside their membership, without losing their tax exempt status. It is also intended that within this 35% amount not more than 15% of the gross receipts should be derived from the use of a club's facilities or services by the general public. Gross receipts are to be interpreted for this purpose as those receipts from normal and usual activities of the club, including investment income. However, where a club receives unusual amounts of income, such as from the sale of its clubhouse or similar facility, that income is not to be included in the formula. That is, such unusual income is not to be included in the gross receipts of the club for purposes of the permitted 35 or 15 percent allowances. It is not intended that these organizations should be permitted to receive, within the 15 or 35 percent allowances, income from the active conduct of businesses not traditionally carried on by these organizations.

From the information submitted, you have not established that you are operated for recreational purposes under section 501(c)(7) of the Code. You have stated that you will conduct hunting and fishing excursions, but have not provided any evidence of these activities. You are not controlled by your members, but controlled by ██████████. You have not provided in your constitution that you are operating for a bona-fide section 501(c)(7) purpose, such as recreation or pleasure.

For an organization to be exempt under section 501(c)(7), it may receive 35% of its gross receipts from sources outside of its membership and no more than 15% of its gross receipts may be derived from the use of a club's facilities by non-members. From the information submitted, you exceed the 15% limitation based on your representation guests were charged a fee to enter your premises. Even though you permitted members to bring guests, the payment of a cover charge would be considered nonmember income pursuant to Rev. Proc. 71-17, since the payment was not received from the member.

In the event you dissolve, liquidation proceeds will be distributed to ██████████ and ██████████, and the remaining proceeds will be distributed to a veterans' organization. Not all of your members share would receive proceeds from a liquidation and thus you violate the inurement provisions of section 501(c)(7), since ██████████ and ██████████ will share in the proceeds from the liquidation.

[REDACTED]

Your operations are similar to the organization described in Rev. Rul. 58-588. Your [REDACTED] has veto authority over anything passed by your membership. Thus your membership does not have control over your operations.

Since you are conducting no activities, there is no commingling amongst members to show that your activities further recreational purposes. Therefore you do not qualify for exemption under section 501(c)(7) of the Code.

Contributions to you are not deductible under section 170 of the Code. You must file federal income tax returns.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key District Director. Thereafter, any questions about your federal income tax status should be addressed to that office.

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

Internal Revenue Service
Attn: CP:E:EO:T:4, Room 6234
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

(Signed) Gerald V. Sack

Gerald V. Sack
Chief, Exempt Organizations
Technical Branch 4

CP:E:EO:T:Y

CP:E:EO:T:Y

T/Lh

7/28/97

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[REDACTED]
[REDACTED]